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RIGHTS OF THE CHILD

Report of the Special Rapporteur on the sale of children, child
prostitution and child pornography, Ms. Ofelia Calcetas-Santos

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Introduction

1. At its fifty-fourth session, the Commission on Human Rights, in its resolution 1998/76 of 22 April 1998, welcomed the report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/1998/101 and Add.1 and 2). The Special Rapporteur was requested to submit an interim report to the General Assembly at its fifty-third session (A/53/311, annex) and a report to the Commission on Human Rights at its fifty-fifth session.

2. In the same resolution, the Commission on Human Rights requested the Secretary-General to provide the Special Rapporteur with all necessary assistance and urged all relevant parts of the United Nations system to provide the Special Rapporteur with comprehensive reporting to make the full discharge of her mandate possible. The Commission also invited the Special Rapporteur to continue to cooperate closely with other relevant United Nations organs and bodies and to convey her findings to the Commission.

I. WORKING METHODS AND ACTIVITIES

A. Working methods

3. The mandate of the Special Rapporteur comprises three elements - sale, prostitution, and pornography, each one of which covers very wide areas of concern. In her past reports the Special Rapporteur identified and analysed the respective roles of three catalysts which she felt were indispensable partners in the fight for the protection of children, namely the justice system, education, and media. She gave extensive recommendations on how these three catalysts could be most effective not only in responding to children who are actually entrenched in situations of abuse but, even more importantly, in the prevention of such abuses.

4. In recognition of the urgent need to address the recent global escalation of the involvement of children in the field of commercial sex, the Special Rapporteur chose to concentrate first on the issues of prostitution and pornography. She studied, *inter alia*, the issues of definition, causation, international and national developments and their effects on children, and made recommendations.

5. The Special Rapporteur will now focus upon the third element of her mandate, the sale of children. The increased international attention being given to the issues of sexual exploitation has heightened awareness of the extent to which children in virtually all areas of the world are being sold both for sexual exploitation and for other purposes. It also brought to light the fact that in most cases where there is sale there is also trafficking involved. It is for this reason that this report includes perspectives both on sale and on trafficking.

6. International law concerning the trafficking of human beings has been evolving throughout the twentieth century, but the recent widespread reports of women and children being trafficked for prostitution have demonstrated the inadequacy of the current legal regime and response mechanisms which purport to address such atrocities.

7. In order to obtain a more comparative overview of developments relating to the sale and trafficking of children, the Special Rapporteur, in July 1998, sent a circular to all Governments, relevant United Nations bodies and agencies, and intergovernmental and non-governmental organizations, soliciting information to be used in her reports to the General Assembly and the Commission on Human Rights, on the following:

- (a) Identified paths within the country through which children are trafficked: the origin of the children and their final destination;
- (b) Identified international trafficking routes which may originate in, pass through, or terminate in the country in question;
- (c) Profiles of the children involved and of those involved in the trafficking, such as their nationalities, ages, and information concerning their background circumstances;
- (d) The purposes for which children are trafficked - i.e. for sexual exploitation, illegal adoption, for use in labour or sports, for use as organ donors, or any other purpose;
- (e) Whether the children are part of a general trafficking path along with commodities, such as drugs or firearms;
- (f) The provisions that are made in terms of prevention/extrication/repatriation/rehabilitation of the child victims after trafficking.

8. By December 1998, replies had been received from the Governments of Austria, Belgium, Chile, China, Colombia, Croatia, Cuba, Cyprus, the Czech Republic, Denmark, France, Finland, Germany, India, Ireland, Jamaica, Maldives, the Marshall Islands, San Marino, Slovakia, Spain, Switzerland, the Syrian Arab Republic, Trinidad and Tobago, Turkey and the United Kingdom of Great Britain and Northern Ireland. The International Organization for Migration (IOM) and the International Labour Organization (ILO) also provided information to the Special Rapporteur. The following non-governmental organizations provided the Special Rapporteur with information: End Child Prostitution, Child Pornography and Trafficking (ECPAT), Defence for Children International (DCI), World Vision International, World Young Women's Christian Association (WYWCA), Christian Solidarity International (CSI), Rádda Barna, Inter-African Committee (AC) on Traditional Practices, as well as the NGO Group for the Convention on the Rights of the Child/Sub-Group on Sexual Exploitation of Children (Switzerland). The information provided in these replies is included in the present report.

B. Activities

9. Since the fifty-fourth session of the Commission on Human Rights, the Special Rapporteur has carried out two field missions. In September 1998, the Special Rapporteur visited the Lao People's Democratic Republic (Vientiane and Savannakhet) at the invitation of the Government. The mission report is contained in document E/CN.4/1999/71/Add.1. In December 1998, the Special Rapporteur visited Belgium (Brussels) and the Netherlands (The Hague and

Amsterdam) at the invitation of the Governments. A summary of the mission is contained in this document, and a full report of the mission will be issued at a later date.

10. In April 1998 the Special Rapporteur was invited to address the Commission on Crime Prevention and Criminal Justice at its seventh session, in Vienna. She used the opportunity to raise her fears that while issues pertaining to juvenile justice are still high on the agenda of criminal justice concerns generally, similar attention has not yet been given to the child victim who is often extremely vulnerable and at risk of multiple victimization, from the time of reporting abuse up to, and even beyond, the time of sentencing of the offenders.

11. In September 1998, the Special Rapporteur served as co-rapporteur at the Conference on Commercial Sexual Exploitation of Children in the Baltic Sea Area, held in Tallinn, Estonia, which was a regional follow-up to the World Congress against Commercial Sexual Exploitation of Children held in Stockholm, and an initial step for cooperation in the region, where trafficking is a serious issue. The purposes of the Conference were to raise awareness among decision makers about commercial sexual exploitation of children, to create conditions for an exchange of experiences and to establish networks of decision makers and experts in the regions. The main themes of the Conference were: the role of legislation; the importance of education and training of relevant groups of professionals; and the importance of cooperation between authorities, experts and non-governmental organizations.

12. In October 1998, the Special Rapporteur addressed the Second National Conference on Children, Young People and Domestic Violence in Brisbane, Australia. The Conference was organized by the Domestic Violence Resource Centre, and brought people together from across Australia and abroad to explore strategies for responding effectively to the needs of children and young people affected by domestic violence. One of the main challenges presented by the Conference was the need for effective collaboration between the domestic violence, child protection, health, education, legal and welfare sectors in providing a comprehensive and workable response to the needs of children thus affected.

13. The Special Rapporteur addressed the Third Asia-Europe Child Welfare Experts' Meeting in London on 6-8 October which concentrated on the exchange of good practice models from Asia and Europe in the implementation of the Plan of Action of the World Congress against Commercial Sexual Exploitation of Children. Experts discussed the methodologies and principles underlying good practice in programmes to protect children, and considered the relevance and applicability of these principles and methodologies in their own respective settings. The following proposals were recommended for inclusion in the Plan of Action:

(a) The establishment of an Asia-Europe Meeting (ASEM) Resource Centre on Legislation for the Asia-Europe area, which would provide, among other things, European and Asian legislation to protect children, information on complementary activities under way, and details of contacts in the ASEM countries engaged in programmes to protect children;

(b) The strengthening of linkages between Governments in the prevention of cross-border sexual crimes involving children and the coordination of international action to prosecute child sex offenders;

(c) Continuation of search and exchange of good practice models, including possible model codes of conduct for sectors involved with child exploitation cases.

14. The Special Rapporteur is very appreciative of such forums which provide for the exchange of initiatives found to have been successful in addressing the various concerns of children, and considers this a step forward in the common search for solutions.

15. In October 1998, after presenting her report to the General Assembly, the Special Rapporteur was invited to a round table discussion with the member States of the European Union, where there was a lively discussion not only on the concerns of the mandate but also on exploring possible means by which to strengthen the mechanism.

16. On 27 November 1998, the Special Rapporteur was again invited by the European Union to a meeting in Brussels. As at the New York meeting, there was a general discussion on the mandate and resources available to the Special Rapporteur, but the main purpose of the meeting was to discuss ways and means of expediting the finalization of the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

II. INTERNATIONAL DEVELOPMENTS RELATING TO SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

17. In Denmark, concerns over the rapid spread of the use of the Internet to disseminate child pornography has resulted in the introduction of several new measures. In 1997, the Ministry of Justice appointed a Committee on Economic Crime and Computer Crime, mandated with the task of assessing all manner of crimes related to Information Technology and to assess the need for a revision of certain sections of the Criminal Code in the light of Internet crimes. In 1998, the National Commissioner of Police established a home page on the Internet where people can report information on suspected distribution of child pornography through the Internet directly to the police.

18. In France, it has been reported that in December 1998, 55 people were detained and 3,000 child pornography videos were seized in a nationwide sweep, when some 130 police investigators working in 34 regions, broke a paedophile network. Half of those detained were placed under formal investigation for receiving videos of child pornography.

19. In Germany, the Federal Government has drawn up a national action plan to combat sex tourism, particularly in connection with child prostitution. Special emphasis is placed on preventative measures, including broad-based information and mobilization campaigns in order to raise public awareness and training programmes in cooperation with the tourism industry.

20. The Special Rapporteur remains concerned about the situation of several thousand female ritual slaves known as "Tro Kosi" in south-eastern Ghana. These females are given by their families to work as slaves in religious shrines as a way of appeasing the gods for crimes supposedly committed by relatives. The girls are allegedly sexually exploited by the priest to whom each is bonded. In July 1998 the Special Rapporteur wrote to the Government of Ghana to communicate her concern and to urge the Government to conduct a thorough investigation into the situation and ensure the immediate release of all children and young women who are enslaved in this way, and she would again urge the Government to respond to her request to effectively criminalize and put an end to the Trokosi tradition, and provide her with the assurance that such measures have been taken.

21. The dissemination of child pornography over the Internet, although a global phenomenon, is reportedly becoming particularly prolific over the web pages, bulletin boards and news servers in Japan. The Special Rapporteur has received information alleging that images of children, sometimes as young as 8 or 9 years old, depicting their rape, torture, and even murder can be downloaded easily by anyone with basic knowledge of the Internet. In July 1998, the Special Rapporteur wrote to the Government of Japan and asked it to take measures to guarantee the physical and psychological integrity of all children who have access to the Internet, or whose images are portrayed thereon, and to take measures to remove such images from computer networks and news servers. The Special Rapporteur would urge the Government of Japan to respond to her letter at the earliest possible opportunity and assure her that the matter is receiving serious attention.

22. Trinidad and Tobago has reported that one facet of its problem with child sex tourism - foreigners visiting a country (solely or inter alia) for the purpose of having sex with children - is the phenomenon of "beach boys" - males as young as 14 who are seen escorting female tourists on the beaches. There is growing concern that sexual activity among children of primary school age has been heightened by the presence of tourists, as children frequenting the beaches after school and during the vacation periods are exposed to varying degrees of sexual activity. The Special Rapporteur welcomes the initiative of the Ministry of Labour to embark on a study of child labour in 1999, the findings of which are expected to form future policies and programmes for the protection of children who may be in danger of victimization and involvement in prostitution, pornography, and at risk of sale. The Ministry is keen to raise the currently very low level of public awareness of commercial sexual exploitation of children as a human rights issue as well as the low priority given to such activities by the police in view of the difficulties of inadequate resources and their preoccupation with what is considered more serious criminal activity.

23. In the United Kingdom, British-led "Operation Cathedral" in September 1998 smashed a paedophile network called "wonderland" operating over the Internet, and thought to be the largest and most dangerous of its kind. The police operation involved raids on 100 suspected members in three continents, and coordinated raids were carried out in homes in Britain, Australia, Austria, Belgium, Finland, France, Germany, Italy, Norway, Portugal, Sweden, and the United States. One investigator reported that in

order to gain membership of "wonderland" individuals had to demonstrate that they had at least 10,000 images of child pornography, and that one Italian member had around 180,000 images.

III. SPECIAL FOCUS ON SALE AND TRAFFICKING OF CHILDREN

A. International legal framework

24. Throughout the twentieth century, a succession of treaties have been adopted at the international level to combat trafficking and related offences, such as slavery, forced labour, and the creation and dissemination of pornography. These statutes have concentrated most notably on trafficking of women and children for the purposes of prostitution.

25. The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others consolidated four previous treaties and obliges States parties to punish "any person who, to gratify the passions of another, procures, entices or leads away another person for purposes of prostitution" or "exploits the prostitution of another person, even with the consent of that person" (art. 1). Under the Convention such offences are to be regarded as extraditable or punishable by the courts of the home State of the offender, where he has returned after the commission of the offence. The Convention sets out procedures for combating international trafficking in persons (especially women and children) for the purposes of prostitution.

26. The adoption of the Convention on the Rights of the Child marked a significant evolution in international law. It contains important safeguards against illegal adoption and transfer of children from their parents. States parties to the Convention undertake to ensure that a child shall not be separated from his or her parents against their will, except where such a separation is necessary for the best interests of the child (arts. 9 and 10). Articles 20 and 21 ensure that, in the case of a child who does not reside with his parents, it is the best interests of the child which remain paramount, with due regard paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background. Article 21 further provides that international adoption must not involve "improper financial gain".

27. Article 11 obliges States to take measures to combat the illicit transfer and non-return of children abroad through the promotion of bilateral and multilateral agreements and, more explicitly, article 35 calls upon States to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

28. The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993 was approved on 29 May 1993 by the Hague Conference on Private International Law, and entered into force on 1 May 1995. It is the most serious attempt to address issues of commercialism and malpractice attendant upon intercountry adoptions as it prohibits improper financial gain from intercountry adoption, specifying that only costs and expenses, including reasonable professional fees, may be charged or paid.

B. Definitions

1. Sale of children

29. In order to gain a clearer perception of the meaning of "sale" in its commercial application, it may be useful to take a look at some definitions of "sale" in general. Black's Law Dictionary 1/ defines it as "a contract between two parties, called, respectively, the 'seller' (or vendor) and the 'buyer' (or purchaser), by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property".

30. The Oxford English Dictionary defines "sale" as "the transfer by common consent of the ownership of a thing or an interest in land, or in incorporeal property, from one person to another in exchange for a price in money".

31. No consensus currently exists with respect to the sale of children. The traditional concept of sale as exemplified above is that it pertains only to property - real, personal or incorporeal - and that the consideration is always price in money. It is difficult to have a definition of "sale of children" since children are not, and should not be, legally and/or morally, the objects of trade or commerce. The reality of such sales, however, proves the need for a definition.

32. Mr. Vitit Muntarbhorn, the first Special Rapporteur on the mandate, defined "sale of children" as "the transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation" (E/CN.4/1994/84, para. 31).

33. The incumbent Special Rapporteur, in her first report to the General Assembly (A/50/456, annex), defined "sale of children" as "the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration" (para. 18). This definition was adopted by her in order to exclude transactions that are strictly on a temporary basis, as when a child is "rented" out, in order to obviate confusion as to whether the transaction constitutes sale or pimping, for example.

34. The confusion created by the lack of a clear definition as to the elements that constitute the "sale" of a child has not helped the members of the working group on the draft optional protocol to the Convention on the Rights of the Child in dealing with the sale of children, child prostitution and child pornography. One position taken by the negotiators is that a "sale" must be for the purpose of sexual exploitation; the opposing view is that it is dangerous to limit the definition of the term in that way.

2. Trafficking of persons

35. Black's Law Dictionary defines traffic in general as "commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. The subjects of transportation on a route, as persons or

goods; the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, highways, etc." It also defines "trafficking" as "trading or dealing in certain goods and commonly used in connection with illegal narcotic sales".

36. There is as yet no internationally recognized definition of "trafficking in persons". The preamble to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others ("Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community, ...") assimilates trafficking with prostitution. The Convention does not contain any real definition of trafficking; however, it defines the trafficker under article 1 (see paragraph 27 above). Recently, however, "trafficking" has been expanded to refer not only to sexual exploitation but also to a wider range of offences.

37. Thus, the General Assembly, in resolution 49/166, defined "trafficking of persons" as the "illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment, and false adoption".

38. At the World Congress Against Commercial Sexual Exploitation of Children, "trafficking" was taken to refer to the illegal moving and selling of human beings across countries and continents in exchange for financial or other compensation.

39. The Global Alliance Against the Trafficking of Women (GAATW), on the other hand, defines "trafficking" as "the recruitment and transportation of (a) person(s) within and across national borders, by means of violence or threat of violence, abuse of actual or perceived authority arising from a relationship, or deception, in order to subject them to the actual and unlawful power of (an)other person(s)".

40. Another useful definition is that advanced by the Netherlands Advisory Committee on Human Rights and Foreign Policy, as follows: "The traffic in person could be defined as transporting a person from one place to another in order to subject him or her to the actual and unlawful power of other persons by means of using violence or the threat of violence or by using a position of authority arising from a relationship or by misleading the other person."

41. For IOM, "trafficking in migrants", which is the illicit transporting of migrants or trade in them, can be said to exist if the following conditions are met: an international border is crossed; an intermediary - the trafficker(s) - is (are) involved in the movement of the migrants; and entry and/or stay in the country of destination is illegal. The migrant may completely avoid contact with authorities during border crossing, present either fraudulent documents or genuine documents which have been altered, or

misrepresent his or her intentions regarding, for example, intended length of stay or economic activity; and the trafficker profits from such activities in terms of economic or other personal gain. 2/

42. The United States Government defines trafficking in human beings, especially women and children, to consist of all acts involving the recruitment, transport, harbouring or sale of persons within national or across borders, typically by deception, coercion or force, and for the purposes of placing persons in situations of forced sexual exploitation or coerced labour. 3/

43. The Conference of Ministers on the Prevention of Illegal Migration held in the Context of the Budapest Process in Prague (14-15 October 1997) recommends that a common understanding of the term "trafficking" should include activities intended deliberately to facilitate the border crossing or residence of an alien in the territory of the State, contrary to the rules and conditions applicable in such a State.

44. The Transnational Training Seminar on Trafficking in Women, held in Budapest from 20 to 24 June 1998, promulgated the following definition: "Trafficking consists of all acts involved in the recruitment or transportation of persons within or across borders, involving deception, coercion or force, debt bondage or fraud, for the purpose of placing persons in situations of abuse or exploitation, such as forced prostitution, slavery-like practices, battering or extreme cruelty, sweatshop labour or exploitative domestic servitude."

45. The Special Rapporteur considers this last definition to be the most workable, although she expresses reservations as to whether trafficking always places the victim in a worse position than that held previously.

46. From the above summary of working definitions, there emerge some basic elements which seem to be widely agreed upon. They include some degree of involuntariness on the part of the person being trafficked, either through the employment of deceit, coercion or actual force, abuse of authority, confiscation of travel documents, or debt bondage. One question on which the above definitions are in dispute is whether trafficking for other than illicit reasons should give rise to criminal culpability.

47. The Special Rapporteur firmly believes that, as in the sale of a person, trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable, regardless of the ultimate purpose for which it is carried out. Thus, the argument that in most cases of adoption the children end up in much improved living conditions, would not in any way justify the trafficking of babies and children. Another issue that still remains unsettled is whether trafficking necessarily involves movement or transportation from one place to another and, if so, if it has to be across borders.

C. Discussion

48. As has been proposed, the sale and the trafficking of children are inextricably linked. The lack of concrete definitions, however, makes it very

difficult in most instances to determine whether a particular transaction is a sale or is trafficking. In most cases, elements of both are involved, but there is no line where one ends and the other begins. For this reason, and for the purposes of this report, the issues of sale and trafficking will not be treated as distinct and separate categories.

1. Causes of sale and trafficking

49. The root causes of trafficking in children are multiple and complex. However, some of the more frequently cited are poverty, lack of employment opportunities, low social status of the girl child, a general lack of education and awareness, inadequate legislation in the countries concerned, and weak law enforcement machinery. Ethnic minorities, tribal groups, undocumented workers, stateless people and people in refugee camps are particularly vulnerable. These factors contribute to the problem, but all ethical, moral, political, economic and health reasons need to be analysed in order to gain a better understanding of how they affect the increase of sale and/or trafficking activities, particularly with regard to children.

50. Issues of sale and trafficking of children are also closely linked to issues of migration, especially illegal migration. A line must be drawn between trafficking and illegal migration in that trafficking, as currently understood, involves some element of involuntariness, either through deception, force or intimidation, whereas illegal migration often occurs with the free cooperation, if not the instigation of the illegal migrant. There are, however, linkages between the two activities. Contemporary developments have caused population movements due to war, persecution, violations of human rights, natural disasters, or very poor economic conditions. However, a number of countries have imposed more stringent measures for border control and entry requirements and have reduced opportunities for legal migration. Such measures, however, do not alter the demand in these countries for cheaper sources of labour in the informal sector which gives rise to irregular, transborder movement.

51. This combination of persistent demand and stricter controls has been taken advantage of by unscrupulous organizations and individuals who realize its potential for profit. The number of persons attempting to enter a country clandestinely has given rise to a market for services such as the provision of fraudulent travel documents, transportation, guided border crossings, accommodation and job brokering. Traffickers exploit the phenomenon of irregular migration and supply these services to would-be immigrants, and always at considerable cost. 4/

52. It is quite clear that as long as the market and fiscal policies of countries encourage the expansion of the informal sector, the underground economy will always be a magnet for irregular migration. Governments will therefore have to take measures to integrate the informal sector with the formal sector if the flow of illegal migrants is to be stopped. This is very crucial, as very often, it is in such irregular and clandestine operations that children are ensnared into trafficking.

2. Identified aims of trafficking

(a) Commercial sexual exploitation

53. The Special Rapporteur has dealt extensively with issues pertaining to the commercial sexual exploitation of children in her previous reports, including the causes and effects thereof.

(b) Adoption

54. Another cause of trafficking, especially of babies and very young children, is intercountry adoption. The increase in such adoptions results from the shortage of children available for adoption in most developed countries. Rising infertility rates in some countries, the widespread use of contraceptives, legalization of abortion, and changing mores which now enable single mothers to keep their children are factors which have drastically reduced the number of children who would otherwise be available for adoption locally. UNICEF estimates suggest that the demand is about 50 applicants for every healthy infant. Hence, for a growing number of couples, intercountry adoption has become the only viable alternative. Furthermore, the growing will to keep children living in very difficult circumstances with their birth families and in their native environments also plays a part in increasing the demand.

55. The "need" for children has put pressure on sending countries to respond quickly to the growing demand, often without having the necessary infrastructure and mechanisms to proceed properly. This situation has led to abuses and the creation of a veritable international market for adoptable children. Trafficking of children for the purpose of adoption is continuously increasing, and in some countries it is reported that the fees charged by intermediaries to handle adoptions range from \$5,000 to \$30,000 per child.

56. However, there is a distinction - although often blurred - between trafficking and illegal practices in intercountry adoption. Where an intercountry adoption is otherwise legitimate, the adoptive parents, in order to accelerate the process, often pay sums of money to intermediaries: people who are on the periphery of the arrangements of the adoption, such as doctors, lawyers or employees in orphanages. In such a case the adoption remains legal, despite the illegal practices involved.

57. However, "trafficking" in this context arises when the adoption can be compared to a sale - for example, when a child is kidnapped or given for adoption by a relative without the prior consent of the parents. Concerning the parents' authorization for adoption, special attention should be given to the situation of unmarried or especially poor women who, because of their financial situation or the social unacceptability of their circumstances, may be forced or pressured into giving up their children for adoption.

58. The Government of Spain provided a useful analysis of some of the methods which have been detected as being in operation in Spain through which illegal adoptions are facilitated. They reported that certain irregularities in international adoptions have been detected in situations where, for example, Russian or Central European children are placed in orphanages through

organizations which receive large sums of money from the future parents for making the adoption arrangements. The Special Rapporteur considers that many elements of the process which Spain reported comprise an accurate picture of the process by which such adoptions are facilitated in many countries.

59. This procedure was reported as follows:

(a) The future parents get in touch with organizations which advertise in the media as being able to arrange legal adoptions;

(b) The adoptive parents then choose the child they want from a "catalogue" or accompany a representative of the organization to the Russian Federation, Bosnia and Herzegovina, Romania, etc. where they visit various orphanages to select a child, who is almost invariably very young;

(c) They then return to Spain with a passport of the country of origin but bearing the names of the Spanish parents. Once in Spain they do everything possible to legalize the adoption, even alleging falsely that the minor is ill, in order to be able to adopt it and, in some cases, they use a document that they obtain illegally or by bribery in the country of origin certifying that the adoption has been certified by a court.

60. Spain has adopted a procedure by which the minors in question are allowed to enter the country, but the documents with which they have been provided and the particulars of the adoptive parents are noted and subsequently brought to the attention of the Directorate-General for Minors and the Family and the Government Procurator's Office.

61. The Spanish police have looked into what happens before adoption and have found that the following devices or methods are used to register children who are bought and sold: (i) the biological mother uses the name of the adoptive mother in the register of the clinic where the birth takes place and then, without fear of subsequent difficulties, registers the child as if it were the natural child of the parents effecting the purchase; (ii) the birth certificates are falsely made out by doctors in the name of the adoptive parents; (iii) prior arrangement is made between the biological mother and the adoptive father to present himself as the natural father and recognizes the child as his own in the register.

62. The flow of intercountry adoptions and of this type of trafficking is from South and Central America, Eastern Europe and South-East Asia to the Western world. For example, in Australia in recent years more than 5,000 children have been adopted from places as diverse as Bolivia, Chile, Colombia, Guatemala, Haiti, Hong Kong, India, Mauritius, the Philippines, Poland, the Republic of Korea, Sri Lanka, Thailand and Viet Nam. 5/ Over 20,000 children from Asia, Central and Eastern Europe, and Latin America are adopted by foreigners from developed countries each year, and the demand for healthy babies is growing rapidly. Those who argue that intercountry adoption is exploitative complain that it encourages the purchase of children, which in turn thwarts the development of children's services in the developing world and is destructive of a child's heritage.

63. It should be noted that even though intercountry adoptions are the primary source of profit for the criminal organizations involved, the clandestine selling of children for adoption also operates within countries.

64. It is noteworthy that the Convention on the Rights of the Child marked a radical shift in terms of the aim of the adoption process. Whereas adoption used to be viewed primarily as a way of satisfying the needs of and providing happiness to the adoptive parents, under the Convention, the best interests of the child are now of primary consideration.

(c) Child labour

65. Although trafficking of children is most commonly associated with prostitution, many children are in fact recruited as a cheap source of labour. In many developing countries, labour "contractors" pay rural families in advance for their children whom they take away to work in cities. Even if such children are not literally enslaved, they are extremely vulnerable when they are away from their home environment. Many of them become domestic workers and are often victims of sexual abuse. Although child labour is most commonly thought to be a problem in developing countries, children are now being trafficked from countries such as Belarus, the Russian Federation and Ukraine into Hungary, Poland, the Baltic States and the capitals of Western Europe for such purposes.

66. Many children who are trafficked for the purposes of labour end up working in construction or in factories, exposed to a multitude of health risks, many of which prove fatal. The ILO reports that in the construction industry, 26 per cent of working children suffer from job-related injuries or illnesses, including beatings from their employers. Children who work in agriculture often suffer the effects of poisoning from the pesticides used.

67. A new programme to curb trafficking of children for labour exploitation in Asian countries has been launched by the ILO. Targeting children under 18 who are at risk and are victims of trafficking in the Mekong basin and in South Asia, the new programme covers Bangladesh, Cambodia, China, Nepal, Pakistan, Sri Lanka, Thailand and Viet Nam. Priority target groups include girls, children from ethnic minorities and tribal populations, and children under 12 years of age.

68. In Africa, the ILO has warned that if current trends continue, there will be 100 million African child labourers by the year 2015. Some live and work in slave-like conditions, are forced into prostitution, or end up on the streets of cities far away from their families.

69. The Spanish Government reported that the existence of an organized network exploiting foreign minors, especially from Ecuador, was uncovered in 1998. The minors, mainly girls between 13 and 17 years of age, travelled by air from Quito and arrived in Madrid or Alicante via Amsterdam. They were tricked into leaving Ecuador with promises of well-paid work, and as such had the authorization of their parents. Once in Spain they were put to work making Ecuadorian handicraft products and selling them in the streets in extremely harsh working conditions. The persons operating the network were of Ecuadorian nationality and were in Spain illegally.

(d) Criminal activities

70. Of the many and varied categories of "labour" for which children are trafficked, some are illegal per se, regardless of the age of the actors. The Special Rapporteur has received reports of organized crime networks using children in various capacities. In Canada it was recently reported 6/ that a large drug ring is luring children from Honduras to Vancouver, where they are being turned into street-corner crack dealers. According to the Vancouver police, as many as 100 Honduran children have been smuggled into Canada. The Honduran smugglers pay their transportation costs and help them across the Canadian border. Once in Vancouver, the ringleaders allegedly set the children up in apartments and help them file refugee claims and sign up for welfare. In return, the children, some as young as 11, are forced to deal drugs on the street to pay off their "debt" to the smugglers. The Special Rapporteur welcomes reports that British Columbia's Ministry of Children and Families is working with the police and immigration officials to find ways to repatriate the children but expresses her concern that any decision regarding the children will reflect their best interests and in no way define them as criminals.

71. IOM reports 7/ that representatives of crime networks recruit street children in Cambodia by giving them glue to sniff, creating an addiction and, thereby, a dependency upon the recruiters. The children are then taken to Thailand, where the glue-sniffing serves the purpose of decreasing the child's inhibitions about committing criminal acts. The IOM report concedes that little information is available about the specific purposes and operation of these criminal groups.

(e) Begging

72. Children are not always deceived or abducted by recruiters of beggars. They are often attracted by stories about the easy money that they can earn in big cities or tourist resorts. Even when most of their earnings are taken from them, the mere fact that they are able to eat every day may represent a significant improvement over their previous life. At the same time, however, the recruiters and leaders of the begging rackets can earn a small fortune from their syndicates of beggars.

73. Handicapped children are particular targets for the recruiters of beggars who believe that the handicap will induce sympathy in the giver. That belief puts the child beggar at serious risk of being deliberately maimed in order to increase his or her earning potential. In 1997, a large number of Bengali children were deported to India from Saudi Arabia, where they had been taken on the pretence that they would visit Mecca. Instead they remained in the country, forced to beg every day from the many pilgrims there. On their return to India, it was discovered that several of them had broken limbs.

74. Handicapped children, old women and mothers with babies from Cambodia are especially popular with traffickers as they are very effective beggars with tourists. The sadder or sicker they look, the more money they will bring in, so that there is fear that some of the children may have been mutilated on purpose. It is reported that they are usually brought to Thailand and that

when they are caught and brought back to Cambodia, the traffickers are usually waiting for them at the border to bring them back the following day. 2/

(f) Armed conflict

75. The alarming trend of increased participation of children in armed conflicts has led to a situation whereby children are abducted and forcibly conscripted for that purpose. The development and proliferation of lightweight automatic weapons has made it possible for very young children to bear and use arms. Many more children abducted and trafficked into war zones are being used in indirect ways which are difficult to assess - for instance, as cooks, messengers and porters. Children have also been used for mine clearance, spying and suicide bombing. These concerns are specifically covered by the mandate of the Special Representative of the Secretary-General on the impact of armed conflict on children.

76. The Special Rapporteur remains concerned about reports of continuing abductions of children in northern Uganda. In June 1998, members of the Lord's Resistance Army (LRA) allegedly abducted 40 schoolgirls from a boarding school in Kalongo, 400 kilometres north-east of Kampala. Estimates suggest that the LRA has abducted between 8,000 and 10,000 children from northern Uganda over the past 11 years, marching their child captives to rebel base camps in neighbouring southern Sudan. Many children die from exhaustion, starvation or disease during the march or are murdered because they try to escape or cannot keep up. On arrival at the base camps, both boys and girls are given military training and forced to take part in hostilities, carry heavy loads and act as personal servants to the rebels. Girls are often given as "wives" to the commanders. (Further details on this situation may be found in the report of the Secretary-General on the abduction of children from Northern Uganda (E/CN.4/1999/69).)

77. Sudanese children are similarly suffering through abduction and forced slavery which has become commonplace during the ongoing civil war in that country. The raiders come from the north of Sudan and their victims are mainly from the Christian and animist Dinka communities in the south. A typical raid takes place early in the morning; men are killed, women and children are captured as slaves, cows and goats are taken, and the buildings are burnt down. Those trying to escape are shot or burnt to death, and those who are captured are then forced to march for miles, carrying heavy loads. Children as young as five are taken as slaves, although younger children will be taken along with their mothers. Most boy slaves are made to tend cows and goats, most girls have to perform domestic labour, such as cleaning, grinding grain, and fetching firewood and water, suffering sexual abuse by their masters. Many girls are subjected to genital mutilation and suffer regular and sometimes severe beatings. 2/

78. The Special Rapporteur was concerned to receive reports that in July 1998, several children between the ages of 14 and 17 went missing from a summer camp in Varmland, Sweden, for teenagers of Kurdish ethnic origin. The information she received alleges that when the children did not return from the camp, their parents feared that they had been kidnapped by the PKK for use in terrorist activities. Further inquiries allegedly revealed that 35 teenagers of Kurdish origin had been brainwashed at the camp and then sent

to the Netherlands. The information claims that the families of these children went to the police which resulted in the return of some of the teenagers, but no information has been made available about the whereabouts of the remaining children.

(g) Sports

79. The Special Rapporteur continues to express her concerns that in the Gulf States, mainly in the United Arab Emirates, the lives of young boys are being put at risk for the entertainment of spectators at camel races. For many years the boys, sometimes as young as four years of age, have been trafficked from countries in South Asia to supply the demand for camel jockeys. The children are attached to the camels' backs with cords, and the camels are made to run down a track. Children who fall risk being trampled to death by the other camels on the track, and if they refuse to ride the camels, they are beaten and forced to ride anyway.

80. In 1993, the Camel Jockey Association of the United Arab Emirates finally prohibited the use of children as jockeys. New evidence, however, clearly indicates that the rules are being blatantly ignored. In February 1998, 10 Bangladeshi boys, aged between five and eight, were rescued in India while being smuggled to become camel jockeys. The boys had been lured away from their poor families with the promise of high-paying jobs. 10/ Also in 1998, airport officials rescued two boys who were being taken to Dubai from Sri Lanka by two men who were later charged with their kidnapping.

81. Information from Anti-Slavery International suggests that new trafficking routes are opening up from north-east and west Africa. In October 1997, police intercepted traffickers in Mali taking young Mauritanian children to the Gulf, and there are reports of young Sudanese camel jockeys working in Qatar.

82. During her mission to Belgium, the Special Rapporteur learnt that children, particularly boys, are being trafficked for competitive sports. Mainly from African countries, boys are being brought to Belgium illegally to become soccer players. They are picked up by unofficial managers who visit countries such as Nigeria for this purpose, brought to Belgium and then taken from club to club by the managers who try and find them a place. If no place is found for them, often they are abandoned and, having come into the country illegally, they are placed in a very vulnerable position.

(h) Marriage

83. Although more likely to involve women, the trafficking of "mail-order brides" may involve girls as young as 13. Men who are looking for women as servants and sex partners are the catalyst for million-dollar businesses, many of which place advertisements quite openly in national and local newspapers in various countries. Mail-order bride agents have recently started using the Internet as their preferred marketing tool, since it reaches the target audience of wealthy men from Western countries. The agencies describe themselves as "introduction services", but their commercial interests in bride trafficking, sex tours and prostitution are thinly veiled by such descriptions. They offer women and girls from Asia and Eastern Europe,

providing photographs accompanied by information such as the woman's height, weight, and measurements. Some pictures show women playing with children, which raises concerns that children are also being trafficked in this way. It is estimated that there are over 50,000 Filipino mail-order brides in the United States alone.

84. Sometimes these "marriages" are successful, but all too often the women are isolated and scared, becoming virtual slaves in their own homes. The incidence of violence against mail-order brides is extremely high. Some men use their wives as prostitutes or for pornography, and there are reports of such women being tortured and killed.

(i) Trafficking in organs

85. Rumours persist that there exists an illegal trade in human organs, and the Special Rapporteur has received allegations that street children in Argentina, Brazil, Colombia, Honduras, Mexico and the Russian Federation are being killed so that their organs can be used in transplant operations. Such allegations have recurred repeatedly for over 20 years, but to the best of the Special Rapporteur's knowledge, nobody has been convicted of being connected with such an offence.

86. In this context, the Special Rapporteur recently received information that children of minority races in Myanmar were being given sweets laced with mind-altering drugs and sleeping pills by government soldiers. These children are then allegedly taken on military trucks to China where their organs, including their liver, kidney, heart and eyes, are used in transplant operations. 11/

3. Methods of recruitment for sale and trafficking

87. In rural areas in south-east Asian countries, the first contact with family members or the children themselves is usually made by men who are native to the villages. They might be people working in factories or as casual labourers in a different country or region, who have returned with reports about the money which can be made there. Acting on behalf of their agents for a sum of money, locals befriend the children and lure them with false promises. Widespread corruption adds to the complexity of the problem: village headmen, police officers and government officials are often involved in recruitment and transportation and in supplying the necessary documents.

88. The 1,500-km border between Nepal and India is porous, with numerous routes that can be used by the traffickers and at least 20 formal entry points. The children are coached on how to answer questions that may be asked at the border. Often the border officials are aware that a crime is being committed but will turn a blind eye to it and later blackmail the agents and claim their share of the money. After crossing the border, the children are handed over to another person who poses as a brother, uncle, or friend. Thereafter, girls might be given to brothel owners, and both boys and girls are taken to work in factories.

89. The study carried out by IOM in Cambodia 12/ on the recruitment of women and girls for prostitution did not lead to the impression that there exists a

highly organized (inter)national criminal network of recruiters and brothel owners, but rather that the networks are based more on a personal, sometimes familial, set of relationships.

4. Trafficking routes

90. Trafficking routes have been identified in virtually every part of the world, but they are constantly shifting. Changes in national legislation, political changes that result in a greater willingness of Governments to implement international obligations, the opening of new markets, conflict situations and relations between the countries in conflict can all affect the ease with which traffickers can operate.

91. Identified trafficking routes operate primarily from south to north, from east to west; from Latin America to North America, Europe and the Middle East; from countries of the former Soviet bloc to the Baltic States and Western Europe; from Romania to Italy, and through Turkey and Cyprus to Israel and the Middle East; from West Africa to the Middle East; from Thailand and the Philippines to Australia, New Zealand and Taiwan Province of China; from Cambodia and Viet Nam to Thailand; from Nepal and Bangladesh to India; and from India and Pakistan to the Middle East.

5. Effects of trafficking on children

92. The effects of prostitution on children have been documented in previous reports of the Special Rapporteur. They include injury, disease and trauma associated with multiple sexual encounters. Child victims of trafficking are usually sent to another country, away from their families and familiar environment, they often do not speak the language, they have absolutely no idea what will be done to them, and they are completely vulnerable to all kinds of abuses. They suffer the added trauma of often having been betrayed by those whom they trust, forcibly separated from their families by long distances and even across borders, isolated by a foreign language and culture. They may become dependent and dangerously attached to pimps and brothel operators. If trafficked across a border, their illegal status makes it very difficult for them to seek help, since they are at risk of arrest and prosecution for prostitution, for illegal immigration, and for having false identity documents. They may be jailed or deported and, on their return home, are at risk of being rejected by families and communities, re-sold, or forced to return to prostitution.

93. Among the rights that are often violated are their right to personal liberty, physical integrity of their person, health, the right not to be subjected to torture or cruel, inhuman or degrading treatment, and slavery or forced labour.

IV. INTERNATIONAL DEVELOPMENTS RELATING TO TRAFFICKING

94. The seventh session of the United Nations Commission on Crime Prevention and Criminal Justice, held from 21 to 30 April 1998 in Vienna, set the guidelines and the schedule for the work aiming at the creation of international legal instruments against trafficking. The goal is to finalize a comprehensive International Convention against Transnational Organized Crime

at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (10-17 April 2000) for adoption by the millennium session of the General Assembly of the United Nations in the year 2000.

95. The IOM's Technical Cooperation Centre (TCC) in Vienna is preparing a study on migrant trafficking in Poland, Hungary and Ukraine. Preliminary results from this study were discussed at a seminar in Warsaw on 8 and 9 June 1998, organized by TCC in collaboration with the Department for Migration and Refugee Affairs of the Ministry of Interior and Administration of Poland.

96. Apart from expanding ongoing activities within Asia, IOM is committed to offering assistance to women and children trafficked to Western Europe from Eastern Europe, Latin America, Asia and other areas. IOM aims to provide a return and reintegration package to these women and children in collaboration with governmental organizations and NGOs from both the Western European side and the country of origin, based on experience acquired in Asia. 13/

97. The European Union approved the "STOP" programme on 29 November 1996, which is intended to promote measures to combat trafficking in persons, the sexual exploitation of children, the production of and traffic in audiovisual material in any form and the disappearance of minors. IOM recently delivered to the EU an analysis of data and statistical resources available in EU member States on trafficking in humans, particularly in women and children for purposes of sexual exploitation, which was carried out for the EU as a part of the STOP programme.

98. The National Criminal Intelligence Service - Europol - has extended its jurisdiction from drug-trafficking and organized crime, to contributing to the suppression of trafficking in human beings and exploitation of any kind, and particularly that of minors.

99. The following section of the report summarizes the information regarding sale and trafficking contained in the replies to the circular sent to all Governments, relevant United Nations bodies and agencies, and intergovernmental and non-governmental organizations by the Special Rapporteur in July 1998.

Austria

100. In Austria, an international working group against trafficking in women has been set up at the Federal Ministry of the Interior to prepare a protection programme assisting the victims of human trafficking. However, this programme is not specifically aimed at children or juveniles, and given the incidence of minors, including boys, being trafficked from Eastern to Western Europe, and the geographical likelihood of Austria being used as a transit or receiving country of such minors, the Special Rapporteur would welcome the extension of this initiative to cover such victims.

101. Austria applies strict criteria regarding the adoption of children abroad, with such adoption only being permissible if it is more conducive to the well-being of the child than an adoption in Austria, taking into account

the child's linguistic, religious and cultural affiliation. Very few adoptions abroad therefore take place, and there are no recorded cases relating to the sale of children in this context.

Belgium

102. The Government of Belgium reports that many of the illegal immigrants entering the country are unaccompanied minors, with a large number coming from Romania and the countries of the former Yugoslavia, and most recently from Albania. The average age of these minors is 14 years.

103. In 1996 and 1997, a number of minors from West Africa arrived in Belgium claiming asylum and pretending to be between 12 and 14. However after taking x-rays of their bones, their ages were determined to be over 16, but they claimed to be younger to avoid being repatriated. Contrary to this is the situation whereby minors (or those who have trafficked them into the country) claim to be older in order to gain a work permit.

Chile

104. With its ratification of the Convention on the Rights of the Child in 1990, the Government of Chile began a process of reviewing its legislation regarding children's rights. Some of the areas targeted for improvement include the laws regarding adoption and the laws regarding child prostitution and pornography.

105. In the area of adoption, the law permits direct contact between the biological parents and the lawyers representing interested foreigners, who may or may not possess the required legal papers to adopt children. The Government of Chile notes that this practice has resulted in the trafficking of children and that the new law will limit such direct contact, calling upon the National Children's Registry to formally supervise all adoptions by either Chilean citizens or foreigners. It is also hoped that the new law will reduce the incidence of the sale of children in Chile.

106. Regarding child prostitution and pornography, prostitution is legal in Chile and has no specific legal age limit. It should be noted, however, that until now, those involved in child prostitution could be punished under other applicable laws such as those prohibiting rape, incest, corruption of minors, sodomy, and the facilitation of prostitution. Additionally, minors are prohibited from working in brothels, cabarets, or casinos. The Government asserts that these measures, in addition to the NGO support devoted to helping girls who fall into prostitution, are sufficient for the time being, as the level of child prostitution has not become a serious cause for concern for the Government, and the police have received only five reports of child pornography in the past two years.

107. The Chilean Government has several programmes in place to aid children who have suffered abuses. These include the Program of Attention and Intervention for Child Abuse of the National Service for Minors, Welcome House Project for Child-Victims of Abuse, the Centre of Attention for Victims of Sexual Abuse, and the Legal Medical Service. These groups are working with legislators to gain more equitable treatment of children and minors.

Additionally, the Government of Chile notes that because the legal system itself makes reporting and investigations of the abuse of children and minors extremely difficult, its perception of abuse could be unrealistic. For this reason, the system is currently being revised.

China

108. The new Criminal Code of China which entered into force on 1 October 1997 set out specific provisions on combating and preventing the crimes of abduction and the sale of women and children. The new Criminal Code incorporated a decision adopted in September 1991 by the Standing Committee of the National Congress on "severe punishments for abduction, kidnapping and trafficking of women and children", which include the death penalty if the circumstances of certain categories of offence are extremely serious. These include traffic of more than three women or children, rape of trafficked women, kidnapping women or children by force, threat or anaesthesia for sale, theft of babies for sale, inflicting severe injuries on or causing the death of women or children trafficked or their relatives; or causing other severe consequences.

109. The Criminal Code also obliges State officials with responsibility for rescuing women and children being trafficked to take action after receiving a request for help from a victim or his or her relative or any other person, with penalties imposed if no action is taken. As regards the abduction of children, the Government of China reports that in most cases boys are the victims of this type of crime, as the feudal ideology of carrying on the family line continues to have great influence in China.

110. To strengthen the sense of responsibility of law enforcement officials and enhance their response, the Ministry of Public Security, the National Federation of Women's Associations and UNICEF jointly held the first Workshop on Legal Knowledge of Protecting Women and Children in May 1998 during which more than 40 police officers from various parts of the country were given training on the Convention on the Rights of the Child. Funding has been increased for investigations of child abduction cases and for rescuing abducted children. The public security bodies launched three broad campaigns in key areas of the country between 1992 and 1996, in which more than 10,000 persons organized in working groups were sent to different provinces to help rescue abducted women and children and to arrest criminals. Government statistics report that in 1997, 1,299 children were rescued and between January and July 1998, nearly 50 children were rescued.

Croatia

111. The Government of Croatia reports no cases of trafficking of children, nationally or internationally, but in recent years it has prevented illegal attempts to bring children from the then-occupied areas of Croatia across the border, the purpose of which had been to give children to foreign citizens for adoption, bypassing the legally provided procedure. Such cases were discovered when the states of origin of the "adoptive parents" requested an official position on whether such adoptions had any legal effect in Croatia.

Cuba

112. In 1997, the legislation concerning the sexual and commercial exploitation of children was strengthened with the introduction of a new Penal Code, which increased penalties for the "merest proposition" of the offer, sale or facilitation of children's involvement in pornographic acts or mendicant activities. Despite these measures, the Cuban Government acknowledges that there has been a slight rise in prostitution in the country, including the involvement of minors in this activity. This is attributed to the increase in tourism, as well as to the recent economic hardships of the country. The minors involved in this activity are entitled to legal protection, as well as social and psychological assistance, while the adults involved face stiff criminal penalties.

Cyprus

113. The Government of Cyprus reported no cases of sale and trafficking of children on its territory, and attributed this to the strong family structure of the Cypriot family and to the legal provisions for the protection of children. Children cannot enter or leave Cyprus freely, and the written consent of both parents is needed for the issuance of a passport to a child under the age of 18. Where an unaccompanied minor attempts to leave the country, inquiries are made at the port of exit. Similarly, an alien child, unless accompanied by a parent or relative or being met by a responsible person, cannot enter Cyprus unless valid reasons are offered as to the purpose of his entry.

114. The Government reported that in recent years a number of women, mostly from Asian and Eastern European countries working as cabaret performers, reported that they had been forced into prostitution. The Special Rapporteur has concerns that Cyprus is being used as a transit point for young women from Eastern Europe being trafficked to countries of the Middle East, notably Israel, and that some of these young women may be minors, accompanied by those involved in their trafficking, posing as relatives.

Czech Republic

115. Within the Czech Republic, the trafficking of children is a sporadic but recurrent problem which is mainly encountered in the Romany community, but with no indications of links with organized crime. However, there are indications that the Czech Republic is a transit country for international traffickers. Working through sophisticated networks of transnational crime syndicates, efforts to identify precise trafficking routes have largely been confounded. Generally, the trafficking routes lead from countries affected by poverty or war to Western Europe. In the cases that have been registered in the Czech Republic, children were flown from the former Soviet Union to Germany, or taken across the border in a private car. The children are, as a rule, included under false names on the passport of the female courier who accompanies them.

116. The Government of the Czech Republic reported that the traffic in children is typically associated with the traffic in other commodities, the

proceeds of which are used for other illegal activities, including the corruption of public officials, and the money is laundered through investments in legitimate businesses.

Finland

117. The Government of Finland reported that in 1998, possibly over 100 Somali children aged between 1 and 15 arrived in Finland as refugees through the family reunification programme, and then disappeared from their habitual residences. Some of them were found in Finland and Sweden seeking asylum under a new name and identity.

118. Finland has presented an initiative to the other Nordic countries whereby DNA testing could be used for determining family connections when receiving refugees within the framework of family reunification programmes.

119. Some minors between the ages of 15 and 18 have come to Finland from the Russian Federation and Estonia. Although minors may not cross the border alone, they sometimes carry falsified identity documents. The Government has concerns that Finns are visiting these regions for the purposes of sex tourism and that sexual services are bought from minors, sometimes paid for with food, clothes or narcotics instead of money. The Finnish Penal Code has been amended and from 1 January 1999, the purchase of sexual services from minors under 18 will be a punishable act.

120. There have been cases of adoption of children from Asian countries and the Government reports cases of persons from the United States inquiring how Finnish children could be adopted for payment. However, since the Finnish Adoption Act was amended in 1985, only a few cases have come to the knowledge of the authorities where an illegal compensation in money has been associated with adoption.

France

121. Over the last 10 years, France has taken a preventive approach to child abuse generally, with attention paid to the specific type of ill-treatment represented by child sexual abuse. A campaign has been carried out to raise public awareness and to inform and train people working with young people to protect them from sexual maltreatment and abuse. A permanent interministerial unit on child abuse (Groupe interministériel permanent pour l'enfance maltraitée (GPIEM)) has been established. The role of this unit is to respond to requests from the departments and to make various works, studies and research available to local partners. GPIEM has been expanded to include ministries dealing with the problem of child abuse at the international level.

122. The Ministry of National Education has offered each primary school pupil a "safety passport", an instruction booklet designed to prevent sexual abuse. A circular distributed by the Ministry in 1997 reminded all teachers of their obligation to report sexual abuse of minors and specifies the penalties applicable to public servants who commit such acts.

123. In the context of the prevention of sex tourism, Act No. 92-645 of 13 July 1992 sets out the conditions for the organization and sale of travel and holiday packages, and are intended to prevent the establishment of sex tourism rings abroad under the guise of legitimate travel. Since 1993, France has been participating in the ECPAT campaign. This participation has included contributing to the drafting of a brochure which has been distributed by over 200 agencies to all travellers going to South-East Asia, so as to make them aware of the penalties and dangers of sex tourism.

India

124. In India, the Central Social Welfare Board indicates that in the six metropolitan cities alone, there are about 70,000-100,000 prostitutes. Thirty per cent of them are below 18 years of age, and at the time of entry into prostitution, about 15 per cent are under 15 years of age while 25 per cent are between 16 and 18 years; 94.6 per cent are Indian, 2.6 per cent are Nepalese and 2.7 per cent are from Bangladesh. Goa is a known destination for sex tourists.

125. India has specific legislation to deal with trafficking and use in prostitution of children through the Immoral Traffic Prevention Act (ITPA) which prohibits prostitution in its commercialized form without criminalizing the sex workers. It covers offences against both girls and boys, and lays the presumption of guilt on the accused in cases where children or minors found in a brothel are detected to have been sexually abused. The Act also envisages a comprehensive scheme for rescue, protection and treatment of the victims.

126. Several proposals are under consideration for strengthening the legal machinery to check sexual exploitation and trafficking at the national, regional and international levels, including measures to deal with preventative aspects, and aim at mitigating the suffering of victims of prostitution. The Special Rapporteur is particularly encouraged to learn that the Government has proposed a constitutional amendment to make the constitutional directive regarding free and compulsory education for children a reality. She would like to take this opportunity to reiterate her belief that education plays a crucial role in the protection of children, through raising their own and their parents' awareness of the dangers of commercial exploitation, providing them with the necessary skills to earn a living in a legitimate manner and, more simply, by providing them with a safe environment and occupying their time on a daily basis.

127. The Government of India has followed a four-pronged strategy in its pursuit of the elimination of child prostitution and trafficking in women and children - the focus being on rehabilitative measures for victims, economic empowerment of women in general to prevent them from falling into prostitution, provision of support services to them, and awareness generation.

Ireland

128. In 1998 the Child Trafficking and Pornography Act was enacted in Ireland, the purpose of which is to strengthen the legislative measures which aim to protect children from sexual exploitation by targeting these two particular manifestations. Another recent initiative is the publication by

the Department of Justice, Equality and Law Reform of a Discussion Paper on the Law on Sexual Offences, which is described as a "legislative stocktaking exercise" of all Irish criminal law concerning sexual offences, and particularly on sexual crimes against children, aimed at facilitating informed public debate on what further law reforms are necessary. The Special Rapporteur welcomes the inclusion in the discussion of the issue of media reporting, as well as issues relating to the introduction of a sex offender or "paedophile" register.

Germany

129. In order to combat trafficking in women and girls more effectively, the Federal Government has institutionalized the Working Group "Trade in Women", in which all ministries involved with the issue at national and state levels, the Federal Criminal Police and the advice centres of non-governmental organizations are represented. As Germany is particularly affected by trafficking in women and girls coming from Central and Eastern Europe, special measures have been taken such as the promotion of advice centres working in Germany with women and girls from these regions who have become victims of trafficking. National measures are being extended by activities at the international level and in countries of origin, such as networking between the advice centres, awareness-building among women and girls in countries of origin, and training, particularly among the police, the judiciary, and members of the diplomatic missions abroad.

130. As a result of the sixth amendment to criminal law legislation which came into force on 1 April 1998, the penal provisions against child removal have been extended in article 235 of the Criminal Code. In article 236, a new penal provision against trafficking in children has been introduced with a view to facilitating legal action in cases of sexual abuse of children. The Criminal Code has been broadened in order to improve criminal prosecution of German nationals in cases of sexual abuse of children abroad. It is now possible for the German judiciary to prosecute such cases even if the perpetrator has his permanent residence abroad.

San Marino

131. The Criminal Code of San Marino, pursuant to article 268, applies a term of imprisonment of 4-10 years to anyone committing traffic in people for the purpose of prostitution in foreign countries. Any connection of the offender with local organizations abroad, as well as the use of force, threat, deception or kidnapping against the victim, are aggravating circumstances increasing the sentence to 6-14 years. Article 283 condemns begging as a profession; punishment includes imprisonment from two months to one year. The Special Rapporteur would take this opportunity to reiterate that, as with prostitution, where begging is carried out by way of an organized syndicate, the minors involved should only ever be treated as the victims and never the perpetrators.

Slovakia

132. In recent years Slovakia has become a transit country for transport of child victims for the purpose of pornography, prostitution and sex tourism. In order to prevent further commission of these offences, the Government has adopted certain measures. In the case of sale of children, the draft of the re-codified criminal law punishes the perpetrators' action more strictly according to the intensity of the violence used and takes the committing of the offence by a member of an organized group, as well as repeated offences by the same perpetrator, into consideration. The amendment to the criminal law also takes into account the motives for committing the offence of kidnapping and the intensity of the violence or threat of violence used. Through the National Interpol Office and the police liaison officers, there is a close collaboration with police abroad in uncovering and documenting cases of child pornography and sexual exploitation of women and children for commercial purposes.

Spain

133. The Government of Spain reported that traffic in children in the member States of the European Union as well as other parts of the world is not only a complex process but is also on the increase. Until a few years ago, the adoption of children in Spain in general was by private arrangement between the two parties. The entry into force of Basic Law No. 1/1996 of 15 January 1996 on the legal protection of minors resulted in a partial amendment to the Civil Code and the Law on Civil Proceedings in respect of adoption in accordance with the provisions of the Hague Convention on Protection of Children and Cooperation in Respect on Intercountry Adoption. At present, the Penal Code defines both domestic and foreign traffic in children and penalizes natural and adoptive parents and intermediaries involved in transactions involving children for gain. The main difficulty encountered by the police in tracking down the traffic in babies is the virtual absence of complaints and the secrecy surrounding the arrangements made between the parties concerned. Large-scale organized crime groups engaged in the sexual exploitation of minors are rare in Spain.

Switzerland

134. On 1 January 1998, an office of criminal analysis in charge of trafficking in human beings was set up. Although its capabilities are limited - only four persons working full time, it has established certain priorities in its activities. It will focus its efforts on combating paedophilia and child sex tourism, pornography and children in prostitution.

Syrian Arab Republic

135. The Penal Code of the Syrian Arab Republic designates the abduction, unlawful transfer and abandonment of a child punishable offences, as are flirting or engaging in an indecent or obscene act with a minor by way of touch, gesture or insinuation. Under the terms of article 10 of the Prevention of Prostitution Act, it is a punishable offence to incite a person to engage in debauchery or prostitution or to aid or abet in a person's engagement therein.

Trinidad and Tobago

136. Trinidad and Tobago reported that there is no concrete evidence of the sale and trafficking of children in, out or through the State, although there have been isolated reports of the trafficking of children from family groups for illegal adoption abroad or sexual exploitation. A greater problem for the country in this context is perceived to be that of a receiving country for sex tourists, which involves the commercial sexual exploitation of male and female children and adolescents. The Special Rapporteur is concerned that among the females involved in prostitution are girls brought before the courts for being "beyond control", such behaviour also including running away from home, habitual disobedience, threatening or violent behaviour towards parents or guardians, and general aggressive and anti-social behaviour towards others. Although prostitution may not be the primary cause for girls being brought before the court, the Special Rapporteur would again like to stress that it is vital that all minors engaged in prostitution are not categorized as juvenile delinquents.

Turkey

137. The Government of Turkey reported that there are no national or international routes through the country for the trafficking of children for sexual purposes. Children involved in prostitution and similar acts are referred to the Juvenile Courts. Before the decision for conviction is taken, an investigation is conducted about the family, social conditions, upbringing and educational backgrounds of the juvenile delinquent. The juvenile delinquents are sent for punishment to detention centres. The Special Rapporteur would again reiterate her grave concerns that some countries continue to treat children in prostitution as offenders rather than victims and would urge all Governments to review their legislation to ensure that punitive measures are never imposed upon such children.

United Kingdom of Great Britain and Northern Ireland

138. In the United Kingdom, public awareness and concern as regards intercountry adoption began to rise around 1990 following media coverage of the situation of orphans in children's homes in Romania. Given the very few babies available for adoption in the United Kingdom, many couples saw the situation as an opportunity to adopt a child, including some who had not received the requisite approval for adoption from United Kingdom authorities. Some of these did not even try to seek approval but merely "rescued" a child from the country. One of the main concerns of the Department of Health is now the removal of children from Guatemala to the United Kingdom without the prospective parents being approved as suitable to adopt. Children are brought to airports in Europe, notably Amsterdam, by the legal representative of the adopters, or sometimes by a relative of the child. The child is then handed over to adopters from the United Kingdom and then brought across the Channel by car. The Department of Health has concluded that many countries from which children are brought to the United Kingdom do not operate effective emigration procedures and have little or no measures in place to control child trafficking. Sometimes court officials and civil servants succumb to bribes

and some lawyers are not thorough in handling adoption applications from overseas. Legal documents required for adoption can often be obtained for a price and forgery of documents is common.

139. The Police Research Group of the Home Office is currently looking at the issue of trafficking in women, and it is expected that this work will overlap with child trafficking issues. The Group is expected to report the results of its research by the end of 1999.

Other countries

140. The following States informed the Special Rapporteur that they have no reports or occurrences of trafficking in children in their countries: Jamaica, Marshall Islands, Maldives, San Marino.

Save the Children Alliance

141. In South Asia, members of the Save the Children Alliance are gathering material about trafficking, and in Bangladesh the Alliance is involved in discussions with the Government on how to include trafficking of children in the National Plans of Action. Save the Children in Greece have prepared a report, "The sexual exploitation and trafficking of children in Greece", in the context of an Alliance Europe project "Vision and Reality", supported by the European Commission.

V. MISSION TO BELGIUM AND THE NETHERLANDS

142. At the invitation of the Governments of Belgium and the Netherlands, the Special Rapporteur visited Brussels between 30 November and 2 December 1998, and The Hague and Amsterdam on 3 and 4 December 1998. During the visit, she consulted both governmental and non-governmental organizations on issues pertaining to her mandate.

143. The Special Rapporteur warmly thanks the Governments of Belgium and the Netherlands and the people she had the privilege of meeting during the visit for their open and fruitful dialogue with her.

144. The Special Rapporteur had been interested in visiting these two countries to investigate more closely the particular concerns of her mandate as they are faced by developed countries, and more specifically to carry out a country visit in Western Europe. Her interest in Belgium had primarily arisen following the shocking case of Marc Dutroux, the man charged with the kidnap, rape and murder of several young girls, amongst suspicions that he was part of an organized network of paedophiles. Both Belgium and the Netherlands were involved in "Operation Cathedral" (see paragraph 3) and the Special Rapporteur was interested in learning more about how countries with extensive Internet access are dealing with the challenges being presented by this medium in the context of her mandate. In the event, little new information regarding the Dutroux case was available, as he has not yet been brought to trial, but the Special Rapporteur was given a very useful overview of the situation of children being trafficked into both countries for various purposes.

145. Due to the very short period of time between the end of the mission and the date of submission of reports for the current session of the Commission on Human Rights, the report of these missions will be issued at a later date.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

146. One basic problem faced in effectively addressing the issues of sale and trafficking is the lack of clear definitions, which results in confusion, difficulty in drafting legislation and weak enforcement mechanisms. Even within the United Nations agencies, Member States and non-governmental bodies, the problem has elicited varied responses.

147. Without a clear understanding of what precisely is meant by the term "trafficking", it is not possible to develop a strong legal basis for the prosecution of traffickers or to combat trafficking effectively. The lack of clarity persists partly because trafficking covers a wide variety of situations, not all of which involve illegal migration or exploitation.

148. Problems are further compounded by constantly changing and innovative forms of recruitment strategies and varying modes of deception, coercion and force employed in the process.

149. Most countries of destination do not have response mechanisms in place to extricate children from exploitative situations arising from sale or trafficking. This is particularly true in the case of adoption, where most law enforcement agents are reluctant to intervene in what are perceived to be purely domestic problems. Likewise, most national legislation does not distinguish between trafficking and illegal migration. Thus, children who are victims of trafficking are also subject to the same policies of deportation.

150. There is no comprehensive gathering of data on the extent of sale and/or trafficking. Where data do exist, the statistics deal with women and children generally, and there are no indicators as to the percentage of children involved.

B. Recommendations

151. To combat trafficking in women and children, the United States and Italy recently established a Working Group on Trafficking in Women and Children. The Group, which held its first meeting in Rome on 14 April 1998, agreed to certain joint actions, for which the Special Rapporteur would like to express her support. Among them are the following:

(a) Protection of the rights of victims of trafficking must be promoted through the exchange of best practices with respect to assistance, protection and social integration of victims. Common initiatives, including joint programme strategies for victim outreach, should be implemented separately in Italy and the United States and should provide for the protection of victims' families in their countries of origin;

(b) There is need for training for law enforcement, immigration and border officials in countries of origin to help them identify patterns and methods of trafficking and to prevent trafficking through effective investigation and prosecution;

(c) Witness protection procedures and victim services should be developed in countries of origin for cases of repatriation, including training for law enforcement officials and assistance to non-governmental organizations that provide victim services.

152. The Special Rapporteur would like to make the following recommendations:

(a) The sale and trafficking of persons must be unequivocally condemned as being an affront to human dignity, since it reduces people to the level of objects of trade and commerce;

(b) International standards with regard to sale and trafficking should be set, together with international mechanisms to ensure reporting and monitoring of State activities;

(c) Hospitals, clinics and care institutions should be strictly monitored, in order to reduce the risk of abduction, sale and trafficking of children from such places;

(d) The possibility of establishing international and regional registers for children adopted internationally should be considered;

(e) There must be international and regional registers for missing children, containing all the pertinent information for identification;

(f) Programmes and initiatives should be established to address the issue of stigmatization of single mothers and to empower them to keep their children, should they so desire;

(g) Bilateral and multilateral cooperation, especially between countries sharing borders and including institutionalized and systematic exchange of information, is imperative if the problem of trafficking of children is to be addressed;

(h) All law enforcement agents, border police, customs and immigration officials, relevant governmental ministers, and members of the judiciary in the countries affected should be trained on and sensitized to issues of trafficking and the rights and needs of the victims. Immigration and deportation policies of the receiving countries should be revised to prevent further marginalization and traumatization of trafficked children;

(i) Victims of trafficking must be guaranteed freedom from persecution or harassment by those in positions of authority and access to free legal assistance and qualified interpreters during all proceedings;

(j) The State in whose jurisdiction the trafficking took place or where the trafficked child is found must take all necessary steps to prosecute all the perpetrators;

(k) Humane policy guidelines can accomplish much to soften legal structures and help to attenuate the plight of victims;

(l) Priority must be given to the ratification and the effective and accelerated enforcement of existing conventions and instruments on human rights, on trafficking of persons and on slavery and slavery-like practices;

(m) National legislation must be reviewed, especially in sending and receiving countries, clarifying not only who is criminally culpable but also the elements of the offence and the corresponding penalties imposable therefor;

(n) Research must be systematically carried out in order to set up more effective response mechanisms, both nationally and internationally. Without statistics and knowledge of cases illustrating the extent of the problem, advocacy for positive action will be very difficult;

(o) Procedures must be elaborated to distinguish between victims of trafficking and illegal immigrants, to enable the victims to take action against the traffickers and to enable them to return safely to their countries of origin with the assistance of reintegration programmes;

(p) Other sanctions aimed particularly at deterring the sale and/or trafficking of children should be considered, like the suspension of operation or outright closure of the establishments involved in any phase of the trafficking and the confiscation of proceeds of the transaction as well as the properties utilized therein, like vehicles or other means of transport or computers, printers or other devices used in the production and falsification of illegal documents to facilitate the trafficking;

(q) Measures must be taken to ensure appropriate protection for victims and witnesses who provide information concerning the trafficking during the course of the investigation and trial and afterwards, which may entail the provisional granting of a temporary permit to stay or, in appropriate cases, the grant of permanent legal status for victims who are in the country illegally;

(r) States should facilitate the transit of child victims who are being returned to their country of origin, assisting in providing transportation and escort, under cost-sharing arrangements, as appropriate, and should ensure not only their safe return but also their continued protection against possible reprisal from abusers;

(s) Existing systems for collecting, processing and exchanging information on trafficking should be made compatible, by way of harmonizing definitions and criteria for data collection;

(t) Legal, transparent recruiting policies and procedures should be established through cooperation between countries in order to ensure that the demand for labour is met without endangering children in the process;

(u) Sustained dissemination of information on the risks of trafficking, the practices of recruiters, the circumstances in brothels and

construction sites and of other kinds of servitude, etc. must be conducted as it is a strong determinant in the decision-making processes of people. As long as information about the profitable prospects of working in another country and the success stories of returnees are more persuasive than information about the risks and dangers, people, particularly children and their parents, will be willing victims of traffickers. This information should be disseminated to the different target groups through school curricula, radio and television programmes, poster campaigns, etc.;

(v) Governments must identify and remove corrupt public officials acting as accomplices of traffickers and traders, and resist the pressure to attempt to address trafficking simply by limiting migration, which exacerbates the problem, especially for children.

153. The Special Rapporteur would like to reiterate some pertinent previous recommendations:

(a) Regional and international conferences specifically addressing the issue of prosecution of child exploitation offences with an international component should be convened in order to determine the most expeditious legal alternatives for the prosecution of offenders, i.e. extradition, prosecution in situ or through the principle of extraterritoriality, as established in legislation or through bilateral or multilateral cooperation;

(b) Reviews of legislation, especially in sending and receiving countries, harmonizing the elements of the offence and identifying which actors are criminally culpable and the corresponding penalties imposable, must be initiated;

(c) Existing response mechanisms and organizations and agencies providing assistance to child victims or their parents or guardians, such as telephone hotlines and focal points in relevant governmental and educational institutions and local communities, should be widely publicized.

Notes

1/ Henry L. Black et al., *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th ed.), Santa Clara (California), West Publishing Co., 1990.

2/ Trafficking in Migrants: IOM Policy and Activities.
www.iom.int/migrationweb/focus_areas/trafficking_in_migrants/index.htm.

3/ "Trafficking in women and children", statement by Ms. Anita Botti, Deputy Director and Senior Adviser on Trafficking, Office of the Senior Coordinator for International Women's Issues, United States Department of State, delegation to the OSCE Implementation Meeting on Human Dimension Issues, 30 October 1998.

4/ Statement by Ms. Narcisa Escaler, Deputy Director-General, IOM, at the United States-European Union Transatlantic Seminar to Prevent Trafficking in Women, Lvov, Ukraine, 9-10 July 1998.

- 5/ Vivien Altman, *Signposts to Asia and the Pacific*, 1996.
- 6/ Reported by Reuters, 20 November 1997.
- 7/ *Supra* note 2.
- 8/ *Ibid.*
- 9/ Reported by Christian Solidarity International.
- 10/ Reported in *Hindu Daily*, 20 February 1998.
- 11/ Reported in *Siam Rat* (Bangkok), 11 May 1998.
- 12/ Annuska Derks, *Trafficking of Cambodian Women and Children to Thailand* (Geneva, IOM, 1997).
- 13/ *Supra* note 2.
